

COTTONWOOD HEIGHTS

RESOLUTION NO. 2011-43

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT WITH SALT LAKE CITY FOR PIPING OF A PORTION OF THE EAST JORDAN CANAL AND ASSOCIATED WORK

WHEREAS, UTAH CODE ANN. § 11-13-101, *et seq.* (the “*Interlocal Cooperation Act*”) provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action following the adoption of an appropriate resolution by the governing body of each participating public agency; and

WHEREAS, the city of Cottonwood Heights (the “*City*”) has engaged a contractor (the “*Contractor*”) to pipe a portion of the East Jordan Canal (the “*Canal*”), and to perform associated work, on property located in the City (collectively, the “*Work*”); and

WHEREAS, Salt Lake City (“*SLC*”) has responsibility to maintain a portion of the Canal and has requested the City to modify its construction contract with Contractor to include, in conjunction with and as part of the Work, piping a portion of the open Canal and making other improvements and performing other maintenance to the Canal for which SLC is responsible;

WHEREAS, SLC is willing to pay the full cost for its portion of such work, estimated at \$189,845;

WHEREAS, pursuant to the authority granted in the Interlocal Cooperation Act, SLC and the City desire to enter into an “interlocal agreement” (the “*Agreement*”) whereunder the Work will be performed on a cost-sharing or reimbursement basis as provided therein; and

WHEREAS, the city council (the “*Council*”) of the City met in regular session on 25 October 2011 to consider, among other things, approving the City’s entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, the city attorney of the City has approved the form of the Agreement as required by *Utah Code Ann.* §11-13-202.5(3); and

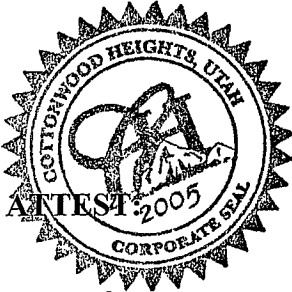
WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the City’s residents to approve the City’s entry into the Agreement as proposed in order to make efficient use of the City’s resources;

NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the attached Agreement with Salt Lake City is hereby approved, and that the City’s mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2011-43, shall take effect immediately upon passage.

PASSED AND APPROVED this 25th day of October 2011.

COTTONWOOD HEIGHTS CITY COUNCIL



Linda W. Dunlavy
Linda W. Dunlavy, Recorder

By Kelvyn H. Cullimore, Jr.
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Gordon M. Thomas	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	<i>Absent</i>	Yea <input type="checkbox"/> Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 25th day of October 2011.

RECORDED this 24 day of October 2011.

568656.1

Interlocal Cooperation Agreement

THIS INTERLOCAL COOPERATION AGREEMENT (this "Agreement") is made as of ___ October 2011, by and between **SALT LAKE CITY**, a Utah municipal corporation whose address is c/o Department of Public Utilities, 1530 South West Temple Street, Salt Lake City, UT 84115 ("Salt Lake City"), and **COTTONWOOD HEIGHTS**, a Utah municipal corporation whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("Cottonwood Heights").

RECITALS:

A. UTAH CODE ANN. §11-13-202 and other provisions of the Interlocal Cooperation Act (codified as UTAH CODE ANN. § 11-13-101, *et seq.*) (the "Act") provides that any two or more public agencies may enter into an agreement with one another for joint or cooperative actions.

B. UTAH CODE ANN. §11-13-214 provides that any public agency may convey property to or acquire property from any other public agencies for consideration as may be agreed upon.

C. Salt Lake City and Cottonwood Heights are public agencies for purposes of the Act.

D. Cottonwood Heights intends to award a construction contract (the "Construction Contract") to Stapp Construction, Inc., a bonded contractor (hereinafter referred to as the "Project Contractor"), for the "Salt Lake City Dept. of Public Utilities East Jordan Canal Piping Project, CHC. 037" on property located in Cottonwood Heights, Salt Lake County, Utah, (hereinafter referred to as the "Project").

E. Salt Lake City has responsibility for the maintenance of a portion of the East Jordan Canal (the "Canal") located between Fort Union Blvd and Greenfield Way, which includes the portion of the Canal within the Project area.

F. Salt Lake City desires to have the Project Contractor replace a portion of the open Canal with a 66-inch pipe (the "Pipe") for which Salt Lake City has maintenance responsibility, and to perform associated work, and Cottonwood Heights is willing to have such work performed under its Construction Contract with the Project Contractor; and

G. Salt Lake City will reimburse Cottonwood Heights for the actual cost incurred under the Construction Contract for replacement (with the Pipe) of the portion of the Canal for which Salt Lake City has maintenance responsibility located between Fort Union Blvd and Dawn Drive, and for the associated work directed by Salt Lake City; and

E. The parties, wishing to memorialize their agreement, enter into this Interlocal Cooperation Agreement.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. SALT LAKE CITY REIMBURSEMENT

A. Salt Lake City will reimburse Cottonwood Heights for its actual cost under the Construction Contract of replacing with the Pipe a portion of the Canal located between Fort Union Blvd and Dawn Drive and performing associated work specified by Salt Lake City (the "Facilities"). The locations and estimated cost for said work is shown in EXHIBIT A, attached hereto. The final amount of Salt Lake City's cost participation shall be determined by actual quantities used of contract bid line items and based on contract bid prices contained in said EXHIBIT A. The Facilities will be constructed in accordance with the plans and specifications furnished by Cottonwood Heights or the Project Contractor and approved by the Salt Lake City, Department of Public Utilities' Director and shall meet any additional standards reasonably set by Salt Lake City in writing to Cottonwood Heights before its entry into the Construction Contract, which additional standards shall be incorporated into the Construction Contract.

B. The estimated amount of reimbursement by Salt Lake City to Cottonwood Heights is \$189,845.00.

C. Within one (1) year after execution and completion of the Facilities pursuant to this Agreement, Cottonwood Heights will submit an invoice to: Salt Lake City Department of Public Utilities, Attn: Director, 1530 So. West Temple, Salt Lake City, Utah 84115. Salt Lake City will reimburse Cottonwood Heights the invoiced amount within sixty (60) days of receipt of said invoice.

2. PROJECT SETTLEMENT

Upon completion of the Facilities, Cottonwood Heights agrees to furnish a certified statement of all expenditures made in the construction of Facilities. Final acceptance of the Facilities by the Salt Lake City will occur within a reasonable period of time after completion thereof, shall be conditioned upon Project Contractor submitting proof to Salt Lake City's reasonable satisfaction that all labor and materials used and expended in the construction of said Facilities have been fully paid for and there are no outstanding liens or encumbrances against the same.

3. CHANGE IN SCOPE OF WORK

In the event there are changes in the scope of the work, extra work, or changes in the planned work covered by this Agreement, a modification to this Agreement approved in writing by the parties hereto is required prior to the start of work on said changes or additions.

4. AUDIT

Salt Lake City shall have the right to audit all cost records and accounts of Cottonwood Heights pertaining to portion of the Project for construction of the Facilities. Should this audit disclose that Cottonwood Heights has been underpaid, it will be reimbursed by Salt Lake City upon submission of additional billing to cover the underpayment. Should this audit disclose that Cottonwood Heights has been overpaid, it will reimburse Salt Lake City in the amount of the overpayment. For purpose of audit, Cottonwood Heights is required to keep and maintain its records of work covered herein for a minimum of three (3) years after final payment is received from Salt Lake City.

5. INDEMNITY AND INSURANCE

A. Cottonwood Heights agrees to indemnify, save harmless and defend Salt Lake City, its agents and employees from and against any and all claims, demands, judgments, expenses and all other damages, injuries and other liabilities of every kind and nature made, rendered or incurred by or on behalf of any person or persons whomsoever, including Salt Lake City and its employees, which may arise out of any act or failure to act, work or other activity by Cottonwood Heights, its agents, employees, subcontractors or suppliers in the construction or installation of Facilities, or performance of its obligations under the Project, as herein contemplated. Similarly, Salt Lake City agrees to indemnify, save harmless and defend Cottonwood Heights, its agents and employees from and against any and all claims, demands, judgments, expenses and all other damages, injuries and other liabilities of every kind and nature made, rendered or incurred by or on behalf of any person or persons whomsoever, including Cottonwood Heights and its employees, which may arise out of any act or failure to act, work or other activity by Salt Lake City, its agents, employees, subcontractors or suppliers in the construction or installation of Facilities, or performance of its obligations under the Project, as herein contemplated.

B. Cottonwood Heights agrees to obtain from the Project Contractor a certificate of insurance naming Salt Lake City as an additional insured under the insurance provided for the Project. Cottonwood Heights also agrees to obtain from the Project Contractor written assurance that the benefits of all warranties of materials and workmanship for the work contemplated hereby, will also extend to Salt Lake City.

C. Both parties are governmental entities under the Governmental Immunity Act, UTAH CODE ANN. § 63-30d-101, *et seq.* (the "*Immunity Act*"). Consistent with the terms of the Immunity Act, the parties agree that each party is responsible and liable for any wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. Neither party waives any defenses or limits of liability otherwise available under the Immunity Act and all other applicable law, and both parties maintain all privileges, immunities, and other rights granted by the Immunity Act and all other applicable law.

6. ADDITIONAL INTERLOCAL ACT PROVISIONS

In compliance with the requirements of the Act and other applicable law:

A. No Interlocal Entity. The parties agree that they do not by this Agreement create an interlocal entity.

B. Joint Board. As required by Utah Code Ann. § 11-13-207, the parties agree that the cooperative undertaking under this Agreement shall be administered by a joint board consisting of the Salt Lake City's Mayor or designee and Cottonwood Heights' Manager or designee. Any real or personal property used in the parties' cooperative undertaking herein shall be acquired, held, and disposed in accordance with this Agreement.

C. Financing Joint Cooperative Undertaking and Establishing Budget. There is no financing of joint or cooperative undertaking and no budget shall be established or maintained.

D. Attorney Review. This Agreement shall be reviewed as to proper form and compliance with applicable law by the authorized attorneys for County and City in accordance with Utah Code Ann. § 11-13-202.5.

E. Copies. Duly executed original counterparts of this Agreement shall be filed with the keeper of records of each party, pursuant to Utah Code Ann. § 11-13-209.

F. Manner of Acquiring, Holding or Disposing of Property. The Property shall be acquired, held or disposed of pursuant to this Agreement and unless agreed to herein shall not be used in a joint or cooperative undertaking.

7. COMPLIANCE WITH SALT LAKE CITY'S ETHICAL STANDARDS.

Cottonwood Heights represents that it has not: (1) provided an illegal gift or payoff to a Salt Lake City officer or employee or former Salt Lake City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in Salt Lake City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City officer or employee or formal City officer or employee to breach any of the ethical standards set forth in the City conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

8. MISCELLANEOUS

A. Neither party shall assign its right, title and interest in this Agreement to any other party.

B. Salt Lake City's right of ingress and egress for maintenance and operation of the Facilities and other property rights, other than as modified hereby, shall be unaffected by this Agreement.

C. All covenants and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, shall run with the land, and shall not be altered except in writing, signed by both parties.

D. This Agreement constitutes the entire agreement between the parties and it cannot be altered except in writing signed by both parties.

E. Any written notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within two business days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the parties at their respective addresses specified above.

F. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.

G. If any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

H. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[Signature pages follow.]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be signed by its chief executive officer or authorized designee and attested by an authorized officer of such party as of the day and year first above written.

SALT LAKE CITY CORPORATION,
a municipal corporation

By: JEFFRY T. NIERMEYER

Its: DIRECTOR OF THE
DEPARTMENT OF PUBLIC
UTILITIES

ATTEST AND COUNTERSIGN:

CITY RECORDER

Approved to Form

Senior City Attorney

COTTONWOOD HEIGHTS, a
municipal corporation

Kelvyn H. Cullimore, Jr., Mayor

ATTEST AND COUNTERSIGN:

Linda W. Dunlavy, City Recorder

Approved to Form

Wm. Shane Topham, City Attorney

Exhibit "A"

DESCRIPTION OF FACILITIES AND RELATED WORK

C.102

CANAL PIPING PROJECT
IRRIGATION CANAL PIPING PROJECT
LOCATED BETWEEN FORT UNION AND 1495 EAST
COTTONWOOD HEIGHTS, UTAH

DATE OCTOBER 2010	
DRAWING NAME COST DIRECTOR'S	
DESIGNED/DRAWN BY CAD DEPT.	
CHECKED BG	APPROVED BG

REVISIONS		
REV	DATE	BY / COMMENTS

0 SCALE MEASURES 1" ON FULL SIZE SHEETS
ADJUST ACCORDINGLY FOR HALF SIZE SHEETS

CONSULTING ENGINEERS AND SURVEYORS

GILSON
INCORPORATED

1000 SOUTH STREET
FARMER'S BUILDING
P.O. BOX 1000
FARMER, TEXAS 75844
TEL. 409-351-1111

Stapp Construction
649 West 250 South
Farmington, UT 84025
(801) 451-6071
(801) 451-8224

Customer
Gilson Engineering
12401 South 450 East
Building C
Draper, UT 84020
RFC #1

Job
Cottonwood Heights Irrigation
Between Ft. Union Blvd & Dawn
Dr(1495 E) / Trail between Ft
Union Blvd and Mtn View Park

Description of Change:

This bid is for 330' of DIP Water line as shown on the drawing provided, split into the two locations shown.

330' of 10" pipe = \$43,390

330 of 8" pipe = \$39,955

This price includes the following:

DIP Waterline; 330 LF, Traffic control, barricades, Sawcut asphalt, Haul off asphalt; 4" x 660 SF, DIP pipe 10", 10" connection fittings, Excavator w/ operator, Laborers; 2 ea x 3 days, Loader w/ operator, Pipe bedding; 2' x 2' x 330lf, Haul off spoils, Asphalt T Patch

Above work is subject to the same conditions as specified in original contract unless otherwise stipulated.
You agree the sum of 39,955.00 will be added to the total contract price.

Original Contract:	486,656.00
Other Approved Change Orders:	0.00
Total Contract to Date:	486,656.00

This Change Order:	39,955.00
Total Contract Upon Approval:	526,611.00

Authorized Signature: _____ Date: _____
Stapp Construction

Authorized Signature: _____ Date: _____
Gilson Engineering